

**Introduced by Senator Cedillo**

February 19, 2010

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An act to add Chapter 3 (commencing with Section 3710) to Title 3 of Part 3 of the Penal Code, relating to the death penalty.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1331, as introduced, Cedillo. California Racial Justice Act: death penalty.

Existing law provides for the imposition of the death penalty as punishment for first-degree murder with special circumstances, train wrecking causing death, treason against the state, perjury resulting in the execution of an innocent person, and fatal assault by a convict serving a life sentence.

This bill would prohibit a person from being executed pursuant to a judgment that was either sought or obtained on the basis of race if the court makes a finding that race was a significant factor in seeking or imposing the death penalty. The bill would provide that a finding that race was a significant factor would include statistical evidence or other evidence that death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race or that race was a significant factor in decisions to exercise preemptory challenges during jury selection. This bill would state that it applies retroactively.

Because this bill would place additional duties on prosecutors, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 3 (commencing with Section 3710) is  
2 added to Title 3 of Part 3 of the Penal Code, to read:

3  
4 CHAPTER 3. CALIFORNIA RACIAL JUSTICE ACT  
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6 3710. No person shall be condemned to death or shall be  
7 executed pursuant to any judgment that was sought or obtained on  
8 the basis of race.

9 3711. (a) A finding that race was the basis of a decision to  
10 seek or impose a death sentence may be established if the court  
11 finds that race was a significant factor in the decision to either seek  
12 or impose the death penalty in the county or the state at the time  
13 the death sentence was sought or imposed.

14 (b) Evidence relevant to establish a finding that race was a  
15 significant factor in decisions to seek or impose the death penalty  
16 in the county or the state at the time the death sentence was sought  
17 or imposed may include statistical evidence or other evidence,  
18 including, but not limited to, the sworn testimony of attorneys,  
19 prosecutors, law enforcement officers, jurors, or other members  
20 of the criminal justice system, that irrespective of statutory factors,  
21 one or more of the following applies:

22 (1) Death sentences were sought or imposed significantly more  
23 frequently upon persons of one race than upon persons of another  
24 race.

25 (2) Death sentences were sought or imposed significantly more  
26 frequently as punishment for capital offenses against persons of  
27 one race than as punishment for capital offenses against persons  
28 of another race.

29 (3) Race was a significant factor in the decision to exercise  
30 preemptory challenges during jury selection.

31 (c) The defendant shall have the burden of proving by a  
32 preponderance of the evidence that race was a significant factor  
33 in the decision to seek or impose the death penalty in the county

1 or state at the time the death sentence was sought or imposed. The  
2 state may offer evidence in rebuttal of the defendant's evidence,  
3 including statistical evidence. If a program to eliminate race as a  
4 factor in seeking or imposing the death penalty was in effect in  
5 the county or the state at the time the death sentence was sought  
6 or imposed in the defendant's case, the court may consider that as  
7 evidence in rebuttal.

8 3712. (a) The defendant shall state with particularity how the  
9 evidence supports the claim that race was a significant factor in  
10 decisions to seek or impose the death penalty in the county or the  
11 state at the time the death sentence was sought or imposed.

12 (1) The claim may be raised by the defendant in a pretrial motion  
13 or in postconviction proceedings.

14 (2) The court shall schedule a hearing on the claim and prescribe  
15 a time for the submission of evidence by both parties.

16 (3) If the court finds that race was a significant factor in the  
17 decision to either seek or impose the death penalty in the county  
18 or the state at the time the death sentence was sought or imposed,  
19 the court shall either order that the death penalty not be sought if  
20 the finding is made before trial, or that the death sentence imposed  
21 be vacated and the defendant sentenced to life imprisonment  
22 without the possibility of parole if the finding is made  
23 postconviction.

24 (b) Any juror testimony offered as evidence shall be consistent  
25 with Section 1150 of the Evidence Code.

26 (c) Notwithstanding any other provision or time limitation, a  
27 defendant may seek relief from the defendant's death sentence  
28 upon the ground that racial considerations played a significant part  
29 in the decision to either seek or impose the death penalty by filing  
30 a motion seeking relief.

31 3713. The provisions of this chapter apply retroactively. For  
32 persons under a death sentence imposed before January 1, 2011,  
33 motions under this chapter shall be filed with the California  
34 Supreme Court on or before December 31, 2013. Motions shall  
35 be filed as provided in this act for persons upon whom the death  
36 penalty is imposed on or after January 1, 2011.

37 SEC. 2. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1   infraction, eliminates a crime or infraction, or changes the penalty  
2   for a crime or infraction, within the meaning of Section 17556 of  
3   the Government Code, or changes the definition of a crime within  
4   the meaning of Section 6 of Article XIII B of the California  
5   Constitution.

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